

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRED J. TAYLOR,

No. C 14-02242 DMR (PR)

Petitioner,

**ORDER DENYING PETITION FOR A
WRIT OF HABEAS CORPUS; AND
DENYING CERTIFICATE OF
APPEALABILITY**

v.

K. CHAPPELL, Warden,

Respondent.

Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 claiming that his constitutional rights were violated in connection with a decision by the California Board of Parole Hearings (Board) in 2013 denying him parole. Petitioner specifically claims that the decision does not comport with due process because it is not supported by "some evidence" demonstrating that he poses a current unreasonable threat to the public. Dkt. 1 at 18-19.¹

He has filed a motion for leave to proceed *in forma pauperis*. Dkt. 5.

This action has been assigned to the undersigned magistrate judge.

Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may conduct all proceedings in a case, including entry of judgment.² Appeal will be directly to the United States Court of Appeals for the Ninth Circuit. *See* 28 U.S.C. § 636(c)(3).

On May 23, 2014, Petitioner consented to magistrate judge jurisdiction in this matter. Dkt. 4.

¹ Page number citations refer to those assigned by the Court's electronic case management filing system and not those assigned by Petitioner.

² A magistrate judge generally must obtain the consent of the parties to enter dispositive rulings and judgments in a civil case. *See* 28 U.S.C. § 636(c)(1). However, in cases such as this one, where the petitioner has consented but the respondent has not been served, "all parties have consented pursuant to 28 U.S.C. § 636(c)(1)," and a magistrate judge therefore "may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case." *Gaddy v. McDonald*, No. CV 11-08271 SS, 2011 WL 5515505, at *1 n.2 (C.D. Cal. Nov. 9, 2011) (quoting § 636(c)(1)) (citing *United States v. Real Property*, 135 F.3d 1312, 1317 (9th Cir. 1995)); *Third World Media, LLC v. Doe*, No. C 10-04470 LB, 2011 WL 4344160, at *3 (N.D. Cal. Sept. 15, 2011); *cf. Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995) (holding that magistrate judge had jurisdiction to dismiss action as frivolous without consent of defendants because defendants had not yet been served and therefore were not parties).

1 A prisoner subject to California's parole statute receives adequate process when he is allowed
2 an opportunity to be heard and is provided with a statement of the reasons why parole was denied.
3 *Swarthout v. Cooke*, 131 S. Ct. 859, 862 (2011). The attachments to the petition show Petitioner
4 received at least this amount of process. The Constitution does not require more. *Id.*

5 Whether the Board's decision was supported by some evidence of current dangerousness is
6 irrelevant in federal habeas. The Supreme Court has made clear that "it is no federal
7 concern . . . whether California's 'some evidence' rule of judicial review (a procedure beyond what
8 the Constitution demands) was correctly applied." *Id.* at 863.

9 For the foregoing reasons, the petition for a writ of habeas corpus is DENIED. Pursuant to
10 Rule 11 of the Rules Governing Section 2254 Cases, a certificate of appealability under 28 U.S.C.
11 § 2253(c) is DENIED because it cannot be said that "reasonable jurists would find the district court's
12 assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484
13 (2000). Petitioner may seek a certificate of appealability from the Ninth Circuit Court of Appeals.

14 Petitioner's application to proceed *in forma pauperis* (dkt. 5) is GRANTED.

15 The Clerk of the Court shall enter judgment in favor of Respondent, terminate all pending
16 motions, and close the file.

17 IT IS SO ORDERED.

18 Dated: June 16, 2014

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20 DONNA M. RYU
21 United States Magistrate Judge
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